

THE HON. J. RICHARD CREATURA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRENDA S. CORBELLO,

Plaintiff,

v.

DION MOORE and JANE DOE MOORE,
dba LIGHTHOUSE FINANCIAL GROUP;
DAVID E. SCHATZ and JANE DOE
SCHATZ, husband and wife, dba D.
SCHATZ CONSTRUCTION, INC.; JOHN
A. COCHRAN and SANDRA COCHRAN,
husband and wife; and CBIC,

Defendants,

v.

CNA, dba CONTINENTAL CASUALTY
COMPANY,

Garnishee Defendant.

No.: 3:10-cv-05357-JRC

ANSWER TO GARNISHMENT AND
AFFIRMATIVE DEFENSES

ANSWER AND AFFIRMATIVE DEFENSES

Defendant-Garnishee Continental Casualty Company ("Continental") files this
Answer and Affirmative Defenses to the Writ of Garnishment filed by Plaintiff-Garnishor
Brenda S. Corbello.

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1. Continental generally denies the allegations of the garnishment action and denies that Corbello is entitled to the relief sought, or to any relief whatever, from Continental.

2. On the date the Writ of Garnishment was issued by the Superior Court for Clark County, Washington, (i) John A. Cochran did not maintain an account with Continental; (ii) Continental did not have possession of or control over any funds, personal property, or effects of Mr. Cochran; and (iii) Continental did not owe any money to Mr. Cochran.

3. Continental issued Lawyers' Professional Liability Policy No. LAW-287275143, to The Cochran Law Firm, LLC for the claims made and reported policy period of July 23, 2008 to July 23, 2009 (the "Policy"). Mr. Cochran was an insured under the Policy.

4. Ms. Corbello filed the garnishment action to satisfy from the Policy's proceeds a judgment she obtained against Mr. Cochran and his co-defendants in the lawsuit captioned *Brenda S. Corbello v. Dion Moore, et al.*, Case No. 08 2 07216 2 (Clark Cty., WA Super. Ct.) (the "Underlying Action"). The Policy does not provide coverage for the Underlying Action for the reasons set forth in Continental's Affirmative Defenses.

AFFIRMATIVE DEFENSES

1. The complaint in the Garnishment Action fails to state a claim upon which relief may be granted.

2. Coverage is not available under the Policy for the Underlying Action for the reasons set forth below.

“(a) Coverage for the Underlying Action is excluded by Policy Section IV.F, which precludes coverage for:

any **claim** based on or arising out of an **Insured's** capacity as:

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1. a former, existing or prospective officer, director, shareholder, partner or manager of a business enterprise or charitable organization (if the above are not named in the Declarations); or
2. a former, existing or prospective officer, director, shareholder, partner, manager, or trustee of a fund or trust which is a pension, welfare, profit-sharing, mutual or investment fund or trust; or
3. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto or any other similar state or local law;

except that this exclusion shall not apply to a **claim** based on or arising out of an **Insured's** capacity as a member, director or officer of any professional legal association, its governing board or any of its committees.

Policy, § IV.F.

(a) Coverage for the Underlying Action also is precluded by the Policy's exclusion of coverage for:

any **claim** based on or arising out of **legal services** performed for any existing or prospective partnership, organization, corporation, company or other business enterprise (including the ownership, maintenance or care of any property in connection therewith), not named in the Declarations, if at the time of the act or omission giving rise to such claim:

1. any **Insured** controlled, operated or managed or intended to control, operate or manage such enterprise; or
2. any **Insured** was:
 - a. a partner or employee of such enterprise, or
 - b. more than a 10% shareholder or a sole proprietor of such enterprise, or
3. **Insureds** cumulatively were more than a 10% shareholder of such enterprise;

except that this exclusion shall not apply to any **claim** based on or arising out of **legal services** to any professional legal association, its governing board or any of its committees. As used in this exclusion, the word "partner" shall be deemed to include members of limited liability companies or limited liability partnerships.

Policy, § IV.H.

(c) The Underlying Action indisputably arises out of legal services that Cochran performed for Corbello Estates, of which he was a member and 25% owner, and out of Cochran's capacity as a former, existing or prospective officer, director, shareholder, partner, manager, or trustee of Corbello Estates. Accordingly, Sections IV.F and IV.H preclude coverage for the Underlying Action."

3. Coverage for the Underlying Action is or may be barred in whole or in part by laches, waiver or estoppel.

4. Coverage for the Underlying Action is or may be barred in whole or in part by failure to comply with conditions precedent to coverage under the Policy.

5. Coverage for the Underlying Action is or may be barred to the extent plaintiffs seek coverage for matters or amounts that are not insurable under law or for which insurance coverage would violate public policy.

6. Coverage for the Underlying Action is or may be barred to the extent Corbello seeks restitution and/or amounts paid (or to be paid) as disgorgement of monies to which the recipient was not entitled.

7. Coverage for the Underlying Action is or may be barred to the extent Corbello seeks coverage for any matter asserted against or any amount incurred by or on behalf of any individual or entity that is not insured under the Policy.

8. Coverage for the Underlying Action is or may be barred to the extent Corbello seeks recovery for conduct committed, attempted or allegedly committed or attempted by any insured in an uninsured capacity.

9. Continental reserves the right to assert affirmatively any other matter that constitutes an avoidance or defense under applicable rules.

WHEREFORE, for the reasons set forth above, Plaintiff Continental Casualty Company respectfully requests that this Court:

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- 1 (A) Dismiss the garnishment action with prejudice;
2 (B) Award Continental its costs incurred herein; and
3 (C) Award Continental all other relief to which it may be entitled.

4 DATED: May 28, 2010

5 BULLIVANT HOUSER BAILEY PC

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7 By /s/ Scott S. Anders
8 Scott S. Anders, WSBA #19732
9 E-Mail: scott.anders@bullivant.com

10 Attorneys for Continental Casualty Insurance
11 Company

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2010, I caused to be served the foregoing
ANSWER TO GARNISHMENT AND AFFIRMATIVE DEFENSES on the following party
at the following address:

Mr. Odine H. Husemoen
Walstead Mertsching
Attorneys at Law
1700 Hudson Street
PO Box 1549
Longview, WA 98632-7934

by:

<input type="checkbox"/>	U.S. Postal Service, ordinary first class mail
<input type="checkbox"/>	U.S. Postal Service, certified or registered mail,
<input type="checkbox"/>	return receipt requested
<input type="checkbox"/>	hand delivery
<input checked="" type="checkbox"/>	other (specify) <u>ECF</u>

/s/ Scott S. Anders
Scott S. Anders